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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,457	02/18/2004	Alan Brooks	CM2727C	1750

27752 7590 06/21/2005

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EXAMINER

VENKAT, JYOTHSNA A

ART UNIT PAPER NUMBER

1615

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,457

Applicant(s)

BROOKS ET AL.

Examiner

JYOTHSNA A. VENKAT Ph. D

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9 and 12-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9 and 12-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Receipt is acknowledged of response and amendment filed on 4/1/05. Claims 8 and 10-11 are canceled as per applicant's amendment. Claims 1-7, 9 and 12-23 are pending in the application and the status of the application is as follows:

The following new ground of rejection is necessitated by the amendment:

Claim Rejections - 35 USC § 112

1. Claims 1-7, 9 and 12-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
2. Claim 1 has been amended to incorporate a part of claim 10. Claim 10 is in Markush group. Amended claim 1 has glassy materials, which has glass temperature greater than 62 degrees centigrade and maltodextrins. Does the composition have both or it can be either one? Detailed explanation is requested since the amended claim lacks clarity.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-5, 7, 9 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,177,065 ('065).
3. The rejection is based upon the amended claim, which has low weight molecular weight soluble material. See col.8, lines 59-61 for proline which is the zwitterionic bulking agent, see col.6, lines 1-5 for Polyvinylpyrrolidone which is the film-forming polymer, see col.5, lines 25-

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35 and line 50 for the glassy material. The patent names total 22 monosaccharides. See the paragraph bridging cols. 7-8 for ascorbic acid, which reads on claim 18 (vitamin C and its derivatives).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-7, 9 and 12-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of EP'116 and U. S. Patent 6,368,595 and Skin Care and Cosmetic Ingredients Dictionary, page 303(1994).

The EP document does not teach the limitation of claims 16-17 and 20-23. The EP document teaches claim 20 without the range at page 8, lines 36-38, and particulate material, which is microcrystalline cellulose and diatomaceous earth of claim 22 without the range at page 7, line 45 and line 51 respectively. Note that the lower range for each additive is 0.1%, which is

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negligible. Patent '595 teaches topical application using the kit with film forming polymer, which is polyvinyl alcohol. See the abstract. The patent at col.3 teaches maltodextrins of claim 10 and humectant of claims 14-15. The patent is relied for the limitation of claim 23. Both the references do not teach the limitation of claims 16-17. The skin dictionary teaches the use of urea as an emollient.

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare compositions of EP '116 and use it in the form of kit taught by '595 which uses kit in analogous film-forming compositions and combine it with urea taught by the dictionary expecting beneficial effect. One of ordinary skill in the art would be motivated to combine the ingredients since the idea of combining the ingredients flows logically from the art. One of ordinary skill in the art would be motivated to combine with the reasonable expectation of success that by adding urea to the compositions of EP, the compositions exhibit increased moisturizing effects due to the combination of film-forming polymer, bulking agent, humectant, silicones, particulate material but also emollient properties taught by the dictionary using urea. Absent a showing the criticality of claim 17, the claims are rendered prima-facie obvious over the combination of the references.

Response to Arguments

7. Applicant's arguments filed 4/1/05 have been fully considered but they are not persuasive.
8. Applicants argue that '595 by itself does not teach or suggest all of the claim limitations of the pending claims. Applicants point out that the patent teaches topical application of an enzyme-containing composition using a film-forming agent wherein after the enzyme has

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fulfilled its task, the film is removed from the site of application (see column 1, lines 40-46), the patent teaches PVA and additionally '595 discloses materials for stabilizing the enzymes is essential and include polyols like glycerol, sorbitol, ethylene glycol, maltodextrins as well as sugars including sucrose, lactose, glucose or trehalose at column 3, lines 29-39 and the patent remotely suggest using the low molecular weight water-soluble material of amended claim 1c and the composition of the instant application does not contain enzyme and the patent '116 or the skin dictionary adds nothing regarding such selectivity of the claimed invention and the claimed invention is unobvious over the combination of the references.

9. In response to the above argument, it is the position of the examiner that patent '595 teaches trehalose claimed as the low molecular weight water-soluble material having a glass temperature greater than 62 degrees centigrade. Applicants attention is drawn to this compound at page 7, line 7 of the specification. The patent does not teach the zwitterionic bulking agent where as the patent '116 teaches film-forming polymer along with zwitterionic compound. This zwitterionic compound has the moisturizing function and skin improvement function. One of ordinary skill in the art would be motivated to combine the ingredients since the idea of combining the ingredients flows logically from the art. One of ordinary skill in the art would be motivated to combine with the reasonable expectation of success that by adding urea to the and the low molecular weight water-soluble material to the compositions of EP '116, the compositions exhibit increased moisturizing effects due to the combination of film-forming polymer, bulking agent, humectant, silicones, particulate material but also emollient properties taught by the dictionary using urea

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10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

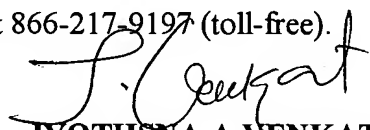
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT Ph. D whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30: 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN K. PAGE can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JYOTHSNA A VENKAT Ph. D
Primary Examiner
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